



Provisions of disqualification of legislatures in England, U.S.A., Australia and French

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Introduction

1. England

The disqualifications for membership of the two Houses are different and are governed by separate statutes.

1. House of Lords.- At present the only persons disqualified are- aliens, infants, bankrupts, persons convicted of treason and felony and persons expelled from the House permanently by a sentence of the House of Lords, acting in its judicial capacity. As per House of Lords Act 1999, hereditary peers are also disqualified from sitting and voting in the House of Lords.^[1]

The disqualification of women^[2] has been partially removed by the enactment of the Life Peerages Act, 1958, which empowers the Crown to confer life peerage on any person (including a woman) by virtue of such person will rank as baron and also be entitled to sit and vote in the House of Lords.

2. House of Commons.- the disqualification for membership of the House of Commons are laid down by common law as well as statutes. The principle categories of the persons disqualified are- (a) aliens; (b) infants; (c) lunatics and idiots; (d) bankrupts; (e) English and Scottish peers; (f) persons convicted of treason and felony; (g) persons having been disqualified for having been guilty of corrupt practices at elections; (h) a returning officer at an election; (i) the holders of certain offices or places of profit^[3]. A person is disqualified for membership of the House of Commons, if he falls in to any of these categories: (1) LORDS SPIRITUAL: as a consequence of the House of Commons (Removal of Clergy Disqualification) Act, 2001, Lords Spiritual have been added to the list of those disqualified; a bishop who is not a Lord Spiritual member of the House of Lords is not disqualified; (2) Judicial Officers; (3) Civil Servants; (4) Members of regular armed forces of the Crown; (5) Members of any police force; (6) Members of the legislature of any country outside the commonwealth apart from the members of the legislature of Republic of Ireland since they are considered as aliens; (7) all the members of the Commission, tribunals; (8) Holders of various offices such as Ambassadors, High Commissioners, the Comptroller and Auditor-General, Judges, Advocates, Parliamentary Commissioners, Chairman of the Statutory Tribunals and Councils, Governor of British Broadcasting Corporation and registration officers at election. There are certain officers who are disqualified for particular constituencies.^[4]

The position relating to 'offices of profit' has been revolutionised by the enactment of the House of Commons Disqualification Act, 1957, 1975^[5] and deserves a special treatment. This Statutes replaces all previous statutes relating to this subject and forms and exhaustive code as to the offices or places of profit, the holders of which disqualified themselves for membership of Parliament, by enumerating them. It will no longer be necessary to apply precedents and common law principle to determine whether an office constitute an 'office of profit'. The following classes of persons are disqualified by the Act-

- i) A person who holds any of the Judicial offices enumerated in Part I of the First Schedule to the Act;^[6]
- ii) Any person employed in the civil services of the Crown, whether in an 'established capacity' or not and whether for whole or part of his time.^[7]
- iii) Any member of the regular armed forces of the Crown;^[8]
- iv) Any member of the public police forces;^[9]
- v) A member of the Legislature of any country or territory outside the commonwealth. Members of the legislature of the Legislatures of any country outside the Commonwealth apart from members of such Legislatures would Generally be disqualified as aliens, but this provision disqualifies those with dual nationality;^[10]
- vi) A member of any of the Commissions or Tribunals specified in part II of the First Schedule;^[11]
- vii) Holders of the offices mentioned in Part III of the first Schedule. These officers are disqualified either because they are appointed by the Crown or because offices is incompatible with membership of the House of Commons.^[12]
- viii) The holders of political offices in the excess of the numbers specified in Sec. 2(1) of the Act. This means that ministers as a class are not exempted from disqualification, not more than 95 ministers shall be entitled to sit and vote in the House at any one time. The maximum numbers of ministers who are not disqualified will be maintained by the order of their appointment as ministers, so that any minister who is appointed after the quota is filled up will be disqualified from sitting or voting unless the number of sitting members is reduced by death or resignation.^[13]

If, apart from an election petition, a question is raised that as

disqualified persons has been elected, the question shall be determined by the House. ^[14] If the House holds to be disqualified his election is void and he must vacate his seat but the House may order that any particular case of disqualification shall be disregarded. ^[15] If it is alleged otherwise than by an election petition that any member of Parliament or person elected to be a member is or has become disqualified for membership whether by vocation, status or incapacity or by reason of office or service, his right to sit and vote in the House of Commons may be decided by the House itself. The House does in fact take notice of any legal disabilities affecting its members and issues writs in the room of members adjudged to be incapable of sitting. Where it is claimed that a person purporting to be a member of the House of Commons is or has been disqualified at any time since his election by reason of office or service under the House of Commons Disqualification Act, 1975, application may be made to Her Majesty in Committee of the Privy Council. Disqualification of persons elected as Member of Parliament on ground subsisting at the time of election may be determined by an election court on presentation of an election petition. ^[16]

2. U.S.A- Art. 1, Sec. 6(2) says-

“no nation or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority the United States, which shall have been created, or the emoluments whereof shall have been increased during such time and no person holding any office under the United States, shall be a member of either House during his continuance in office.”

a) The first part of the clause disqualifies a member of Congress for appointment to a federal office which is created, or the emolument of which are increased ^[17] during his term of membership.

b) The second part disqualifies the holder of a federal office to become a member of Congress.

But federal officers may be elected and may take his seat as a member of Congress if he resigns his office before presenting his credentials to the House. ^[18]

3. Australia

Section 44-45 of the Australian Constitution Act sets forth the disqualifications for the membership of the House of Representatives as well as of the Senate, as follows:

“44. Any person who-

i) Is under acknowledgement of allegiance, obedience, or adherence to a foreign power, or is subject or citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or

ii) “Is attained of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisoned for one year or longer”; or

iii) Is an undercharged bankrupt or insolvent”; or

iv) Hold any office or profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or

v) Has any direct or indirect pecuniary interest in any agreement with the public services of the Commonwealth otherwise than as member and common with the other members of an incorporated company consisting of more than twenty five persons;

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives: ^[19]

“but sub section (iv) does not apply to the offices of any of the Queen’s Ministers of State for the Commonwealth, or of any of the Queen’s Ministers for a State, or to the receipt of pay, half pay, or a pension by any person as an officer or member of the Queen’s Navy or Army, or to the receipt of pay as an officer or member of Naval or Military Forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.” ^[20]

4. Fifth French Republic

Article 23 of the French Constitution of 1958 says:

“The function of a member of the Government shall be incompatible with the exercise of any Parliamentary mandate, with the holding of any office, at the national level in business, professional or labour organisations, and with any public employment or professional activity.”

One peculiar feature of the provision, as pointed out already [under Art. 75 (5), ante], is that it not only disqualifies or unseats a members of parliament by reason of his having accepted an office of profit, business under the Government and the like, but also for being appointed a minister.

References

1. See Hood Phillips, Jackson on Constitutional, Administrative LAW, 8th Edn. 2001 Chap. IX, “House of Lords”, Para 9.013 at, 179.
2. Viscount Rhondda’s case, 1922 AC 339.
3. See Constitutional, Administrative Law, Bradley AW, Ewing, 13th Edn. 200, Chap. IX, “Composition and Meeting of Parliament”, at, KD. 169.
4. See Constitutional, Administrative Law By Hood Phillips AND Jackson, 8th Edn. 2001, Chap. X, “THE House OF Common”, Para 10.007 at, 205-206.
5. Halsbury, 4th Edn. 34, 423-440
6. See para 1110 of Halsbury’s Laws OF England, 4th Edn, 34.
7. Para 1107, Ibid.
8. Ibid.
9. Ibid.
10. See Hood Phillips and Jackson on Constitutional AND Administrative LAW, 8th Edn. 2001 Chap. X, “HOUSE OF Common “, para 1010.007 at, 205.
11. For the list of bodies who are disqualified, see para 1111 of Vol. 34 of Halsbury’s LAWS OF England, 4th Edn.
12. Ibid., para 112

13. See paras 1114 and 1115 of vol. 34 of Halsbury's Laws OF England, 4th Edn.
14. Halsbur's Laws OF England, 4th Edn, 34, 1116
15. Halsbury's Law OF England, 4th Edn. 34. 1116.
16. See Halsbury's Law OF England, 4th Edn. 4TH Edn., vol. 34 'Parliamnet" paras 1117,1118 and 1119.
17. Cf. Ex parte Levitt. (1937) 302 US 633.
18. Corwin, Constitution OF THE U.S.A. 1953, 101.
19. Author's Select Constitutions OF THE World, 2nd Edn. 156-157.
20. See Sec.45, quoted on p.4984.